

SPECIAL CIVIL APPLICATION NO. 3376 OF 1995.

Coram: R.R.Jain, J.

November 18, 1995.

Order:

Causing an employee to vacate office either during or on completion of period of probation after considering suitability for continuance cannot be equated with dismissal or termination so as to attract the provisions of Article 311 of the Constitution. Period of probation does not confer any vested right in the employee as the right flows from contract or service rules and, therefore, cannot avail the benefit of a permanent employee. Consequently, removal thereof during the period of probation does not amount to forfeiture of any right and carries no evil or stigma. In the instant case, impugned order of removal is an order simpliciter bringing an end to the contract of service and does not carry any stigma. I do agree that an order of termination without carrying any stigma but based on misconduct can be punitive attracting the provisions of Article 311 of the Constitution of India but a misconduct being the basis for considering suitability for retention in service as has been done in this case can never be a punishment as has been held by the Supreme Court in the case reported in 1969 SLR 429 and, therefore, on facts, the ratio of judgment in the case of Anoop Jaiswal v. Government of India, reported in AIR 1984 SC 636 has no application.

As regards nature of the order and its merits, the learned tribunal has dealt with in detail, keeping in mind the ratio laid down by catena of decisions referred therein. The learned tribunal has also not left any

aspect untouched as it appears from the plain reading of the impugned judgment and has also tried to discuss merits in light of dictionary meaning of words "termination", "dismissal", "removal", etc.

Alleging breach of Rule 33 (1)(b) of the BCSR, the learned advocate has invited my attention to a judgment in the case of Sub-Divisional Soil Conservation Officer v. M.M.Saiyed, reported in XXXI (1) GLR, 495. But, in my view, since the question pertains to removal of a probationer, Rule 33 (1)(b) of BCSR cannot be resorted

to. In the case of Sub-Divisional Soil Conservation Officer (supra), the question was about termination of a temporary employee and, therefore, the court had rightly observed about breach of Rule 33 (1)(b).

In this view of facts, I have no reason to interfere with the order passed by the learned Tribunal so as to say that the learned Tribunal has either not exercised the jurisdiction vested or has exercised in excess. In view of this fact, I do not find any substance enabling me to bring it to the logic end of rejection. Order accordingly.

18.11.1995. (R.R. Jain, J.)